

The 19th November, 1973

No. 10160-4Lab-73/37441.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Shri Madhu Sudan Sharan Cowshish, Arbitrator, Lathmaran Street, Jagadhri, in respect of the dispute between the workmen and the management of M/s Haryana Distillery, Yamuna Nagar.

**BEFORE SHRI MADHU SUDAN SHARAN COWSHISH ARBITRATOR IN THE
MATTER OF INDUSTRIAL DISPUTE**

between

Shri Pritam Singh, and the management of M/s Haryana Distillery, Yamuna Nagar

Present :—

Shri Pritam Lal in person.

Shri K. R. Gupta, General Manager on behalf the respondent management.

AWARD

The industrial Dispute between the workman namely Shri Pritam Singh and management of M/s Haryana Distillery Yamuna Nagar was referred to me for giving my arbitration award in the said dispute. This reference bears the Government Gazette Notification No. ID/Ambala/215/A-71/861, dated 5th January, 1972.

The dispute referred to me was in the following terms. "Whether the termination of Shri Pritam Singh's services is justified and in order. If not to what relief he is entitled to?"

The parties were summoned to put up their respective case either in writing or verbal. Both the parties agreed that the parties will put up their case verbally first and if any contingency arises then a written statement of claim and written statement may be filed by the parties respectively.

In the first meeting the parties proceeded with their respective case verbally and as no willingness was shown by either party to submit his case in writing the parties were directed to lead their evidence in support of their case. The management produced three witnesses namely Shri Mohan Singh a manager/partner M/s United Chain Industries Ltd Yamuna Nagar who simply said that the applicant workman got Rs. 50/- from us against a signed voucher which stood admitted by Shri Pritam Singh also.

The other witness on behalf of the management was its head time-keeper Shri Narender Kumar Garg. This witness produced leave application submitted by the applicant workman namely Shri Pritam Singh which bears the overwriting with regard to date (27th July, 1971). This overwriting is not at one place but at three places. The witness could not explain the reason of these overwriting with regard to dates. As such his statement is of no help to the management at all because the witness admits that the overwritings at three places on Exht 'M' are all in his own hand but no valid reason could be told by him for all this. Thus the very sight of the Exht M will tell that the document is not produced with its original shape at all. The document Exht 'M' is also therefore of no use to the management.

The third witness on behalf of the management is the General Manager Shri K. R. Gupta. This witness along with witness No. 2, i. e. Shri Narender Kumar Garg have tried to bring on record that Shri Pritam Singh had told them that he might left the job within two three days. This I understand is to establish the genuineness of the alleged resignation filed by the applicant as asserted by the management and which is marked as Exhibit B in the record of the case. But the circumstances and the documents other than Exhibit B will prove that there was no resignation at all by the applicant workman.

The very wordings of Mark B Exhibit in para 3 as reproduced there will prove that this document cannot be treated as a resignation on behalf of the applicant workman.

Para 3 "under these circumstances. I am forced to resign, otherwise I am well pulling on with my job. There is nothing against my good work and conduct and I am fully prepared to continue service."

In the cross examination the witness Shri K. R. Gupta admits that "the reason for termination of service of S. Pritam Singh are based on his voluntary resignation and as conveyed by our letter Mark 'I'. This letter is very short and only conveys to the applicant that his resignation conveyed by the applicant,—vide his letter dated 21st July, 1971 Mark B is accepted and he is being relieved today i. e. 28th July, 1971" other proof leading to the conclusion to the effect that

Mark (B) letter addressed by the workman is not a resignation and for all purposes cannot be treated as a resignation is a letter mark in the file of the case as 'C' which is dated as 21st August, 1971 (much after the letter Mark 'I' the alleged letter of acceptance of resignation and relieving the applicant on 28th July, 1971). This letter (Mark 'C') is a show cause notice to the workman as an accused person and to offer his explanation for the misconduct of remaining absent without leave. This letter is from the management and this very document is quite enough to prove that the applicant was not relieved on 28th July, 1971 as shown in letter of the management mark as 'I' dated 28th July, 1971. Prior to this letter another letter by way of show cause notice was issued to the workman by the management and the same is mark 'E' this document is dated 1st July, 1971 and it highly reflects the conduct of the workman in adverse side. All the two documents further prove that the applicant was dismissed because of the misconduct as asserted in the management's letters mark C and E though in a colourable excuse of acceptance of resignation which is not a resignation at all.

It is now a well settled law in the Industrial Law that no colourable termination can be effected if it is in a punitive way. Hence the termination is wrong and unjustified coupled with an illegal action of the management.

The following citation may be read with advantage (in favour of my above stand) 1973. All India Services Law Journal Vol I part III page 359 (Delhi High Court) & 1960-II-LBLI. 222 SC 1965 XXVII FIR page 131 SC.

The management was prejudiced against his conduct as is evident,—vide Exhibit C and E and it wants to get rid of it, which it did in a form of simplicitor discharge basing this action on the alleged resignation by the applicant. Having set at rest the controversy whether the termination was justified and in order the next question comes to what relief the applicant is entitled to in return.

The natural relief is the reinstatement with continuity of service and with full back wages in case it is amply proved by the management that the applicant was gainfully employed during the days he was under forced unemployment. The parties specially the management lead a witness to the effect that he was employed in that firm. It was in the statement of the applicant itself that he was working as a typist in the Civil Court Jagadhri during these days of forced unemployment. The applicant did not assert any amount which he was earning by this job of typist. The withholding of the amount by the applicant gives presumption that he was gainfully employed and was thus earning his livelihood. Hence he is not entitled to full wages for this period at all. Any how I allow him 50 per cent of his earnings as a wage claim which further is fixed at Rs. 960 only for one year, i. e. from 28th July, 1971 to July, 1972 the day the proceedings in the arbitration case were concluded.

In addition to Rs. 960.00 I also allow him Rs. 540.00 as compensation for not reinstating him. Thus on receipt of Rs. 1,500 in this way the applicant has no entitlement on employment or reemployment in the said factory. This compensation is awarded in view of restrained relations existing between the management and the workman concerned.

I award accordingly.

Jagadhri

16th July, 1973/3rd October, 1973

MADHU SUDAN SHARAN COWSHISH,
Arbitrator

Four copies of the award are forwarded to the Secretary to Government of Haryana Labour Department Chandigarh for his record and necessary publication please.

MADHU SUDAN SHARAN COWSHISH,
Arbitrator,
S. N. BHANOT,

Commissioner for Labour & Employment
and Secretary to Government, Haryana.

राजस्व विभाग

मुख्य जागीर

दिनांक 19/20 नवम्बर, 1973

क्रमांक 2753-ब(II)-73/34078.—श्री रूप चन्द, पुत्र श्री नन्द किशोर, निवासी खर्मपुर खेड़ा, तहसील न बिल्ला बुझगावा की दिनांक 8 मई, 1973 को हुई मृत्यु के परिणामस्वरूप हरियाणा के राज्यपाल पूर्वी पंजाब मुख पुरस्कार अधिनियम 1948 की धारा 4 के अधीन प्रदान की गई शक्तियों का प्रयोग करते हुए सहर्ष आदेश देते हैं कि श्री रूप चन्द की मुल्लिक 150 रुपये की जागीर, जोकि उसे हरियाणा सरकार की अधिसूचना क्रमांक 590 र(III)-69/8690, दिनांक 24 अप्रैल, 1969 तथा 5041 मार (III)-70/29505, दिनांक 8 दिसम्बर, 1970 द्वारा मंजूर की गई थी, अब श्रीमती शरवती देवी, विधवा श्री रूप चन्द के नाम खरीफ 1973 से 150 रुपये वार्षिक की दर से मंजूर की जाती है। इन अधिकारों का प्रयोग समद में दी गई शर्तों के अन्तर्गत किया जायेगा।

शि० ल० मागपाल, अवर सचिव।